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SEP 27 2005

In re Application of:
Victor Alfaro et al. : DECISION SUA SPONTE
Serial No.: 09/495,886 : WITHDRAWING HOLDING
Filed: February 1, 2000 : OF ABANDONMENT
Attorney Docket No.: 60970047-1 :
:

This is a decision, *sua sponte*, withdrawing the holding of abandonment of the above-identified application.

A final Office action was mailed on March 20, 2003. An after-final amendment was filed on May 27, 2003. An advisory action was mailed on June 16, 2003 indicating that the after-final amendment would not be entered. On July 21, 2003, applicant filed a paper entitled "REQUEST FOR A CONTINUED PROSECUTION APPLICATION (CPA) 37 CFR 1.53(d)" together with an amendment and a petition for one month extension of time. July 20, 2003 was a Sunday so the paper with the one month extension of time was timely under the provisions of 37 CFR § 1.136(a) and 37 CFR § 1.7. On August 26, 2003, a one page form entitled "NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)" was mailed. The form states near the bottom of the page:

"Note: A continued prosecution application (CPA) under 37 CFR 1.53(d) cannot be filed in a utility or plant application. A CPA filed in a utility or plant application that has a filing date **on or after June 8, 1995** will be treated as an RCE under 37 CFR 1.114. The request for a CPA in the instant application, however, has been treated as an improper RCE for the reason(s) indicated above."

However, none of the reasons indicating why the RCE was improper was checked on the form. On June 15, 2004, a Notice of Abandonment was mailed indicating that the application was abandoned in view of applicant's failure to timely file a reply to the Office letter mailed on August 26, 2003.

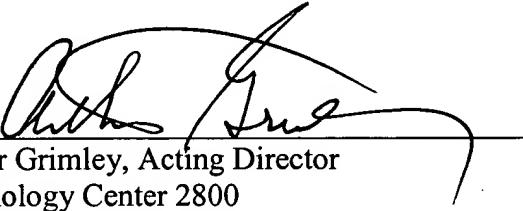
A review of the written record indicates that the CPA filed July 21, 2003 should have been treated as a proper RCE under the provisions of MPEP § 706.07(h)(IV) since the CPA did satisfy the requirements of 37 CFR § 1.114 to be a proper RCE. Thus, the form mailed on August 26, 2003 indicating the CPA was being treated as an improper RCE was sent in error.

Since the paper mailed August 26, 2003 was sent in error, although no petition or request to

withdraw the holding of abandonment in this application has been filed, the Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn.

The application file is being forwarded to the Technical Support Staff of Technology Center 2800 for processing of the CPA filed July 21, 2003 as a proper RCE. Thereafter, the file will be forwarded to the examiner for consideration of the RCE.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.



Arthur Grimley, Acting Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components